

PATENT
Customer No. 22,852
Attorney Docket No. 09955.0047-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Frédéric FORTIN et al.)
Application No.: 10/505,469) Group Art Unit: 3775
Filed: August 20, 2004)
For: FLEXIBLE VERTEBRAL LINKING DEVICE) Examiner: Woodall, Nicholas W.
) Confirmation No.: 4004
)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicant brings to the attention of the Examiner the listed documents on the attached PTO SB/08 Form. This Information Disclosure Statement is being filed before the mailing date of a first Office Action after the filing of a Request for Continued Examination in the above-referenced application.

Copies of the listed foreign and non-patent literature documents are attached.

Copies of the U.S. patent publications are not enclosed.

The United States Court of Appeals for the Federal Circuit held in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 U.S.P.Q.2d 1801 (Fed. Cir. 2003) that an "adverse decision" by another examiner may meet the materiality standard under the amended Rule 56, and thus, Applicants should disclose prior rejections of "substantially similar claim[s]" to the Office. Accordingly, although

Applicants are not representing that the Office Actions in the co-pending application are material to the present application and are not admitting that any of the other claims are substantially similar, out of an abundance of caution, Applicants have listed the Office Action in co-pending Application No. 10/524,174 on the attached PTO/SB/08 and a copy is attached.

The following is a concise statement of relevance of the non-English language documents.

1. FR 2692952 A1: This document was cited in an Office Action in European Patent Application No. 03778377.6, which is related to U.S. Patent Application No. 10/524,174. This document is also believed to be related to U.S. Patent No. 5,375,823 by Navas.
2. Office Action dated July 30, 2009, for European Patent Application No. 03778377.6 (French): An English translation of this document is submitted herewith.

Applicant respectfully requests that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claim in the application and Applicant determines that the cited documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the U.S. Patent and Trademark Office the relevant facts and law regarding the appropriate status of such documents.

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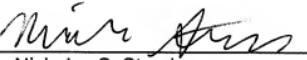
Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: March 8, 2010

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